

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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MICHAEL MCCARTHY, et al.,	)	CIVIL ACTION NO.
	)	1:20-cv-10701-DPW
Plaintiffs,	)	
	)	<b>PLAINTIFFS’</b>
-against-	)	<b>SUPPLEMENTAL</b>
	)	<b>SUBMISSION AS TO</b>
CHARLES D. BAKER, et al.,	)	<b>RETAIL SALES</b>
	)	
Defendants.	)	
_____	)	

Pursuant to the Court’s request, Plaintiffs provide this statement concerning the pertinent laws and regulations that apply to retail sales of firearms vis-à-vis non-retail sales.

1. Regulations that impose various consumer protection requirements on handgun sales apply only to those engaged in “the conduct of any trade or commerce,” M.G.L. c. 93A, § 2(a), and thus, they do not generally apply to private transfers. These regulations include requirements that:
  - a. sellers provide “a safety device designed to prevent the discharge of such weapon by unauthorized users,” which has been approved by State Police, M.G.L. c. 140, § 131K; 940 C.M.R. 16.05(1);
  - b. handguns (manufactured and first sold to a consumer since 1998) have either “a mechanism which effectively precludes an average five year old child from operating the handgun” or “a hammer deactivation device” (if they were sold for the first time since 1998), 940 C.M.R. 16.05(2), (4); *see also* 940 C.M.R. 16.07(1);

- c. magazine-fed handguns (manufactured and first sold to a consumer since 1998) have “a load indicator or magazine safety disconnect,” 940 C.M.R. 16.05(3)-(4); *see also id.* 16.07(1);
  - d. handguns either pass a “Performance Test” showing reliability, or alternatively, that they not be composed of “Inferior Materials,” 940 C.M.R. 16.04(1), (3); *see also* M.G.L. c. 140, § 123 (18th); 940 C.M.R. 16.07(4);
  - e. handguns (manufactured and first sold to a consumer since 1998) have “Tamper-Resistant Serial Numbers,” 940 C.M.R. 16.03; *see also id.* 16.07(1);
  - f. handguns not be “prone to repeated firing based on a single pull of the trigger, prone to the explosion of the handgun during firing with standard ammunition, or prone to accidental discharge” (subject to a limited exception for guns manufactured and first sold to a consumer before 1998), 940 C.M.R. 16.04(2); *see also id.* 16.07(3);
  - g. sellers provide a warning regarding the need to safeguard firearms, 940 C.M.R. 16.06(1); and
  - h. sellers provide purchasers with information on “how to load, unload, and safely store the handgun, and how to engage and disengage all safety devices on the handgun,” 940 C.M.R. 16.06(2).
2. The implied warranty of merchantability applies only to sales by “merchants,” and it thus would not normally apply to private transfers. M.G.L. c. 106, § 2-314(1); *see also id.* § 2-104(1).
3. Within the context of the current COVID-19 pandemic, businesses that remain open as “essential services” must take various steps to minimize the risk of spreading

disease, as set forth in the document “Guidance Regarding the Operation of Essential Services” from the Commonwealth’s Executive Office of Housing and Economic Development” (attached to the Declaration of Julie Kobick, Doc. No. 79, as Exhibit

M). Private sellers would not need to take these steps. These measures include:

- a. providing “[a]ccess to handwashing facilities,” “[a]lcohol-based hand sanitizers, as available” and “[d]isinfecting wipes”;
- b. “ensur[ing] that both employees and customers remain at least six feet apart at all times,” such as by providing “Social Distancing Lines”;
- c. “sanitiz[ing] frequent touchpoints throughout the day, including point of sale terminals at register”; and
- d. “[m]aintain[ing] regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.”

Dated: May 6, 2020

Respectfully submitted,

THE PLAINTIFFS,

By their attorneys,

/s/ David D. Jensen

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Admitted *Pro Hac Vice*

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 6, 2020.

/s/ David D. Jensen  
David D. Jensen, Esq.